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McMAHON, MARTINE & GALLAGHER, LLP
Attorneys for Defendant MICHAEL R. EDELMAN
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55 Washington Street, 7th Floor
Brooklyn, New York 11201
(212) 747-1230

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
SELIM ZHERKA,

Index No. 08 CIV 2062

Plaintiff,

**DECLARATION IN REPLY
AND IN FURTHER
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

-against-

Michael F. Bogdanos, individually, Michael R. Edelman a/k/a "The Consultant", individually, Phillip Amicone, individually and in his capacity as Mayor of the City of Yonkers, New York David "Doe" a/k/a "Ethan Edwards", individually, Edmund Roe a/k/a "MOB Buster", individually, John Poe, individually, William Roe, Individually, and Janet Doe, individually,

Defendants.

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WILLIAM D. GALLAGHER, an attorney admitted to practice before this court hereby declares the following:

1. I am a member of the law firm McMAHON, MARTINE & GALLAGHER, LLP, attorneys for the defendant, MICHAEL R. EDELMAN, a/k/a The Consultant ("Edelman"), and submit this Declaration in Reply to the Opposition filed on behalf of the plaintiff and in further support of Edelman's Motion for Summary Judgment.
2. In the Memorandum of Law submitted in opposition to the Edelman motion counsel repeatedly refers to the fact that the Edelman Declaration states that he searched **lowhudblog.com** and

not lohud.blog.com. This was my mistake and the import of Edelman's Declaration was clear.

Plaintiff's counsel's repeated references to the error is no more than a red herring injected by plaintiff in an effort to avoid the conclusions of Edelman's Declaration.

3. Counsel also submitted a statement pursuant to local Rule 56.1 noting that no such statement was submitted on behalf of Edelman by counsel.

4. I respectfully submit that the issues with respect to the claims against Edelman are so limited and are clearly set forth in his Declaration that his Declaration be deemed a Statement pursuant to local Rule 56.1.

5. For the convenience of the Court we are enclosing herewith a counter statement pursuant to local Rule 56.1.

Dated: Brooklyn, New York
September 5, 2008

McMAHON, MARTINE & GALLAGHER, LLP

By: /s/ William D. Gallagher
WILLIAM D. GALLAGHER (4761)
Attorneys for Defendant Michael R. Edelman
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55 Washington Street, 7th Floor
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Our File No.: 799.1992

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Buster", individually, John Poe, individually, William Roe,
Individually, and Janet Doe, individually,

Defendants.

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DEFENDANT EDELMAN'S STATEMENT PURSUANT TO LOCAL RULE 56.1

1. The posting set forth in Second Paragraph 5 of plaintiff's Complaint is not defamatory in that the plaintiff is a limited public figure and there is no allegation or factual basis that the posting was done maliciously.
2. The complete posting, as set forth in the Exhibit annexed to plaintiff's Affidavit in Opposition, is not a republication of the posting that appeared in the Yonkers Tribune.
3. The full posting as set forth in the Exhibit to plaintiff's Affidavit in Opposition to the Motion is not a statement of fact with respect to plaintiff when read in context with the commentaries before and after the posting itself.

4. Section 230 of the Communications Decency Act of 1996 immunizes users of interactive computer services from civil liability in tort with respect to material disseminated by them but created by others.

5. Paragraph 11 of the plaintiff's Complaint is not defamatory.

6. There is no evidence or factual basis for the claim in paragraph 26 of the plaintiff's Complaint that he entered into a conspiracy with defendant Bogdanos or any other unidentified co-defendants.

Dated: Brooklyn, New York
September 5, 2008

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